



CITY OF COLLEGE PARK ADVISORY PLANNING COMMISSION
4500 KNOX ROAD COLLEGE PARK, MARYLAND 20740
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ADVISORY PLANNING COMMISSION

Approved Minutes of Meeting
September 5, 2013 – 7:30 P.M.
City Hall Council Chambers

<u>Members</u>	<u>Present</u>	<u>Absent</u>
Mary Cook, Chair	<u> x </u>	<u> </u>
Clay Gump, Vice-Chair	<u> </u>	<u> x </u>
Lawrence Bleau	<u> x </u>	<u> </u>
James McFadden	<u> x </u>	<u> </u>
Charles Smolka	<u> </u>	<u> x </u>
Rose Greene Colby	<u> x </u>	<u> </u>

Also Present: Planning Staff- Miriam Bader and Theresheia Williams; Attorney – Sue Ford.

I. Call to Order: Mary Cook called the meeting to order at 7:35 p.m.

II. Approval of Minutes:

Lawrence Bleau moved to accept the minutes of August 1, 2013 after correcting Item I to replace Mary Cook's name with Clay Gump. James McFadden seconded. The motion carried 4-0-0.

III. Amendments to Agenda: There were no Amendments to the Agenda.

IV. Public Remarks on Non-Agenda Items: There were no Public Remarks on Non-Agenda Items.

V. Public Hearings:

CNU-2013-02: Certification of an 8-unit apartment building that exceeds the current maximum density requirement of 12 dwelling units per acre as non-conforming and not illegal

Applicant: College Park Enterprises, LLC

Location: 4802 Calvert Road

Mary Cook explained the hearing procedures and placed witnesses under oath. Miriam Bader summarized the staff report. The applicant is requesting Certification of Nonconforming Use in the R-18 zone for an eight-unit apartment building. The property is located at 4802 Calvert Road in the Old Town College Park Historic District. The development is nonconforming due to exceeding current maximum density requirements. The maximum density permitted in the R-18 zone is 12 dwelling units per acre. The buildings became nonconforming with respect to density on May 6, 1975 when the density requirement changed from 1800 square feet of net lot area per dwelling unit to 12 units per acre. A valid Use and Occupancy permit issued prior to the date of nonconformance was not submitted.

On June 27, 1950, the property was rezoned from R-55 (single-family detached residential) to R-18 (multi-family residential). After rezoning to R-18, seven one-bedroom apartments were established and were in compliance with the minimum lot area per dwelling unit of 1800 square feet. On July 16, 1971, a fee simple conveyance of a 10 foot strip along Calvert Road reduced the lot to 18,184 square feet. The County amended the Zoning Ordinance on May 6, 1975 to reduce the density to 12 units per acre making the building nonconforming at 19.16 dwelling units per acre. The current property owners, Thomas J. Stemmy and Frank Holmes, bought the property from Edward Wright on August 31, 1979. Around 1980, the use became eight 1-bedroom units. There is a discrepancy between the County records, the City records and the property owner in terms of when the eighth unit was added. The applicant states in his affidavit, Exhibit 7d, that he bought the property as eight units in 1979. The applicant was granted a Prince George's County Certificate of Occupancy for 8 units on June 2, 1981. The City Occupancy Permit indicates that the eighth unit was added in 1983.

Certification of nonconforming use requires that certain findings be made. First, it must be established that it is a legal use. Based on the submitted site plan, it can be concluded that the apartment building was established in accordance with all the regulations in effect at the time the use began. Second, there must be no break in operation for more than 180 days since the use became nonconforming. To establish that there was no break in operation for more than 180 days, since the use became nonconforming in 1975, the applicant submitted the following documents:

- 1) City of College Park Annual Residential Occupancy Permits, Rental Unit License and Inspection Report.
- 2) Letter from Washington Suburban Sanitary Commission (WSSC) that list the activation date for the property.
- 3) Affidavit from Charles Reading, previous adjoining resident, stating that the building has operated as a multifamily use since 1969 and an affidavit from Thomas J. Stemmy, part owner of College Park Enterprises, LLC stating that the building has been in operation since he purchased it in 1979.
- 4) Insurance records that the property has been insured as an eight unit apartment building since 1975.

Staff concludes that the subject building was legally established in 1950 as an apartment building according to the regulations in effect at the time. There is also a preponderance of evidence to show that the use has operated continuously. Staff recommends that the Certification of Nonconforming Use be approved and that a new Use and Occupancy Permit be issued to the current owner.

Miriam Bader submitted the staff report, Exhibits 1- 7e and the PowerPoint presentation into the record. Commissioners accepted unanimously.

Commissioner James McFadden stated that he was a person of record for this case and was notified about the hearing. He stated that this does not influence his decision or impair his ability to render an impartial judgment.

Mary Cook asked why wasn't the Use and Occupancy permit submitted?

Miriam Bader stated that it does not exist.

Thomas Stemmy, owner, testified that they purchased the property from Edward Wright in 1979. He stated that he was totally surprised that they were in violation 30 years later. He had no idea he would have to go through this type of expense to try to explain what occurred. He stated that when he purchased the apartment building, it was insured for 8 units at that time. Mr. Stemmy stated that one of the tenants who lives in the garden style apartments has been there since 1983.

Elizabeth Holmes, owner, stated that the building consists of individual apartments and it has been that way since 1979. Nothing has been altered.

David Dorsch, 4607 Calvert Road, testified that he has seen the house for many, many years and it is a beautiful house. He has no issue with the Use and Occupancy permit for 8 units. He stated that there should be more older properties that have a larger number of occupants because this would help to promote smart growth.

Lawrence Bleau asked if he had any knowledge of how many units were there before 1975?

David Dorsch stated that he had never been inside the house.

Lawrence Bleau asked if the number of units would have to be identified when making a determination for certifying the nonconforming use?

Sue Ford, attorney, stated that APC's job is to weigh the evidence in the record, including the testimony to determine whether by a preponderance of the evidence if it was 7 or 8 units in 1975.

Thomas Stemmy stated that Mr. Charles Redding, who is a housing inspector for the City of College Park, submitted an affidavit stating that as a young man he did maintenance work in the building and there were 8 units since 1969.

Lawrence Bleau asked if the commission certifies the building for 8 units, does that mean it cannot go above the 8 units?

Sue Ford stated that unless they modify the building, they would have to go through a different process.

Commissioners reviewed the evidence and testimony submitted and determined that:

- 1) A Nonconforming Use Site Plan was submitted that indicates that the apartment building was established in accordance with all the regulations in effect at the time the use began in 1950.

- 2) Based on a preponderance of the documentary evidence submitted including City of College Park occupancy permits, Washington Suburban Sanitary Commission records, two affidavits, and insurance records, the structure at 4802 Calvert Road has been continuously operated as an 8 dwelling unit apartment building and there has been no break in operation for more than 180 days since the use became nonconforming on May 6, 1975.

Lawrence Bleau moved to approved the Certification of Nonconforming Use for CNU-2013-02 because the commission finds that the use was valid when it was first established, the preponderance of evidence indicate that there were 8 units in 1975 when it became nonconforming and the use was continuance since that time. Rose Colby seconded. Motion carried 4-0-0.

VI. Update on Development Activity Miriam Bader reported on the following:

Seven Seas Restaurant- Located at 8503 Baltimore Avenue was purchased by a new owner. Opening in the space will be Piggy's Grill, which will be a Korean BBQ restaurant.

Knox Village – (Formerly Knox Boxes) The developers, Toll Brothers, are proposing a mixed use project consisting of 445 multi-family dwelling units contained in a mix of apartments and townhomes to be used for student housing. The project will also include 12,325 square feet of retail and 470 parking spaces. Application for Detailed Site Plan has been submitted.

JPI West (Monument) and JPI East (Metropolitan) - Both have filed applications to amend previously approved Detailed Site Plans for multi-family. They are both requesting amendments to reduce the amount of retail and increase multi-family. Monument amended plan shows 235 apartments and 4,800 sf retail along Route 1. Metropolitan amended plan shows 224 apartments, 55 townhomes, and a large reduction in retail.

VII. Other Business: There was no other business.

VIII. Adjourn: There being no further business, the meeting was adjourned at 8:40 p.m.

Minutes prepared by Theresheia Williams